BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Implement Senate Bill 237 Related to Direct Access.	R. __________

ORDER INSTITUTING RULEMAKING TO IMPLEMENT SENATE BILL 237 REGARDING DIRECT ACCESS AND TO CONSIDER CHANGES TO EXISTING DIRECT ACCESS PROCEDURES

Summary

The Commission opens this Order Instituting Rulemaking (OIR) to implement Senate Bill (SB) 237,[1] which increases the number of gigawatt hours allowed in Direct Access arrangements for non-residential customers and directs the Commission to provide recommendations to the Legislature on whether and how it should resume the Direct Access program for all interested non-residential customers, among other issues.

This OIR also addresses two proposals from the proceeding on the Direct Access Customer Coalition's Petition for Rulemaking (P.)18-09-001, which also relates to Direct Access.[2] The two proposals from the Petition seek to make changes to the current Direct Access Monthly Report and the Direct Access

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[1] Stats. 2018, Ch. 600, amending Public Utilities Code section 365.1. All further statutory references are to the Public Utilities Code Sections unless otherwise specified.

[2] *See* P.18-09-001 (Petition).

Customer Relocation Declaration form.[3] Since both SB 237 and the remaining issues from the Petition relate to how the Direct Access program will function in the future, we combine the matters into one proceeding.

1. History of Direct Access and Current Rules

Direct Access is a program that allows end-use customers of an investor owned utility (IOU) such as Pacific Gas and Electric Company, San Diego Gas & Electric Company, or Southern California Edison Company to elect to take their electric service from a competing Electric Service Provider. [4]

Direct Access was instituted in 1998 as part of a comprehensive energy industry restructuring program designed to bring retail competition to the California electric energy markets.[5] Subsequently, the restructuring program was suspended when, during the energy crisis of 2000-01, the Governor issued a proclamation declaring an emergency and the California Legislature enacted Assembly Bill 1X (AB 1X).[6] AB 1X required that the California Department of Water Resources (DWR) procure electricity on behalf of the customers of California IOUs, and it required the Commission to allow DWR to recover the cost for its power purchases.[7]

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[3] The remaining issues raised by the Petition are not in the scope of this proceeding and will addressed in a separate decision.

[4] "Direct Access" refers to arrangements whereby end-use customers access wholesale power markets transactions by purchasing electricity from Energy Service Providers. *See* sections 331(c) and 365 (b)(1).

[5] *See* Decision D.95-12-063, as modified by D.96-01-009, (1995) 64 Cal. PUC 2d 1, 24 (Preferred Policy Decision). The Legislature codified the Preferred Policy Decision in Assembly Bill (AB) 1890, Stats. 1996, Ch. 854.

[6] Stats. 2001, 1st Extraordinary Session (AB 1X).

[7] Id. at Ch. 4.

Also, pursuant to AB 1X, the Commission suspended the right of customers to enter into new contracts for Direct Access service after September 20, 2001, but allowed preexisting contracts to continue in effect.[8] To account for the electricity purchases that DWR made on behalf of bundled customers who switched to Direct Access service before September 20, 2001, the Commission established the cost responsibility surcharge that certain Direct Access customers were obligated pay to cover their share of the DWR's revenue requirement and, therefore, protect bundled customers from cost shifting.[9]

To govern the Direct Access market activities for grandfathered Direct Access contracts, the Commission instituted Rulemaking (R.) 02-01-011, which was a multi-phased proceeding. In the initial phase of the proceeding, the Commission established the "standstill approach"[10] to allow it to regulate Direct Access market activities in a manner that recognized the contractual rights of Direct Access customers while adhering to the suspension requirements of AB 1X. Under the standstill approach, pre-suspension Direct Access customers

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[8] D.01-09-060 at 8, as modified by D.01-10-036; *see also* R.02-01-011 at 8.

[9] *See* D.02-11-022, rehearing denied by D.02-12-027. The Commission continued to address the cost shifting issue in subsequent decisions. *See* D.06-07-030 (adopting revised mechanism for determining customer CRS for post-December 2005, as modified by D.07-01-030, D.07-05-022, and D.07-05-005, rehearing denied by D.07-01-020); D.05-01-040 (adopting Cost Responsibility Surcharge (CRS) for departing customer generation for 2001-2003); D.03-07-028, as modified by D.03-08-076 (establishing interim CRS for departing municipal load); D.03-07-030 (establishing CRS for departing municipal load effective post-July 2003); D.03-04-030, as modified by D.03-05-039 and D.07-05-006 (adopting CRS for departing customer generation).

[10] D.02-03-055, as modified by D.03-01-078, rehearing denied by D.03-09-027. The Commission confirmed this load growth limitation by clarifying in D.03-04-057 that the "standstill" policy is aimed at "maintaining the then-current levels of DA" as of September 20, 2001. D.03-04-057 at 14, request to modify denied by D04-07-025. The Commission also clarified that "normal usage variations" means "daily and seasonal load fluctuations." (*Id.* at 18.)

are allowed to continue to participate in the Direct Access market, subject to certain requirements, including that they cannot add load beyond normal usage variations.

In addition, the Commission established the "switching exemption," allowing customers to switch between bundled service and Direct Access service after the suspension date, provided that the customer had an executed Direct Access contract prior to September 20, 2001.[11] The Commission also established rules to manage, among other things, account changes and customer relocations.[12]

In 2006, the Commission granted the Alliance for Retail Energy Markets's (AReM) petition for rulemaking to consider whether or under what conditions, the current suspension on the Direct Access program should be lifted.[13] The multi-phased rulemaking scoped three primary issues: whether the Commission has legal authority to lift the Direct Access suspension, whether public policy goals merit lifting the suspension, and whether the Commission should establish rules to govern the reinstitution of Direct Access. Among other things, the

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11 *Id.*; *see also* D.03-05-034 (addressing issues related to the legality of the switching exemption and establishing safe harbor rules).

12 D.02-03-055, as modified by D.03-04-057 and D.04-02-024. The Commission established twelve suspension rules. *See* D.02-03-055 at 20-27. The subsequent decisions modified Rule 5 to allow customers to relocate to new locations under certain circumstances, and revised Rule 6, concerning the addition of new meters, to be consistent with the modifications of Rule 5, and eliminated redundant rules.

13 R.07-05-025, granting Petition (P.) 06-12-002.

Commission determined that it did not have authority to lift the suspension because DWR was still supplying power to retail customers.[14]

Then in 2009, the state Legislature took the first step towards reopening retail competition in the California energy markets by enacting SB 695,[15] which authorized the Commission to increase the allowable Direct Access kilowatt hour limit (Allowance Cap) for non-residential customers. Pursuant to SB 695, the Commission issued D.10-03-022, which, among other things, increased the Allowance Cap, established procedures for future adjustments of the Allowance Cap, developed a methodology to assign Resource Adequacy costs among Load Serving Entities, and implemented enrollment procedures to assign the increases to new Direct Access load during the phase-in period.[16]

The enrollment procedures required customers to file a Notice of Intent (NOI) to sign up for Direct Access service during an open enrollment window (OEW). Next, the IOUs assigned the available kilowatt-hours (KWh) to customers based on the amount of KWh available for that phase-in year, and the remaining customers were placed on a waitlist that was effective for a year.

In addition, as part of the SB 695 proceeding, the Commission modified the Power Charge Indifference Account (PCIA) paid by Direct Access customers. The modifications addressed market and regulatory changes such as

[14] *See* D.08-02-033 at 22. However, the Commission outlined a framework to facilitate the removal of DWR from its role of supplying electric power to retail customers. *See* D.08-11-056, rehearing denied by D.09-08-031.

[15] Stats. 2009, ch. 337.

[16] D.10-03-022, as modified by D.10-05-039 (moving the end-date for the Open Enrollment Window to July 15, which extended the window by 15 days); rehearing denied by D.10-10-024.

procurement requirements for renewable resources.[17] Also, among other things, the Commission revised the financial security requirements for Energy Service Providers (ESP)s.[18]

In 2012, the Commission adopted process improvements for administering new enrollments of direct access load.[19] Specifically, the Commission established reporting requirements and implemented a lottery procedure, which is a modified version of the temporary enrollment procedures previously established in D.10-03-022. The lottery procedure provides a method for adding new load to the Direct Access program as space under the Allowance Cap becomes available due to departing load. The program uses a randomizer to assign numbers to customers who submit NOIs to add load to the Direct Access program during the OEW, which occurs during the second work week in June. On a monthly basis, IOUs are required to provide the Direct Access Monthly Report, which reports on whether the actual Direct Access KWh are less than the Allowance Cap. If space is available, the IOUs are required to notify customers who are on the waitlist so that they may enroll additional load into the Direct Access program. On December 31, 2017, 7,603 gigawatthours (GWh) of customer load was on the waitlist.

In 2018, the state Legislature took another step toward reopening retail competition in the California energy markets by enacting SB 237, which, as discussed below, increases the Allowance Cap and seeks recommendations on

[17] *See* D.11-12-018, as modified by D.14-07-028.

[18] The Commission revised the financial requirements for ESPs to cover incremental procurement costs risks for certain Direct Access customers who involuntarily return to bundled service. *See* D.13-01-021.

[19] *See* D.12-12-026.

whether and how the Direct Access program should be reinstated for all interested non-residential customers, among other issues.

2. Requirements of Senate Bill 237

SB 237 sets forth two main requirements. First, it adds Section 365.1(e) to the Public Utilities Code, which states:

> On or before June 1, 2019, the commission shall issue an order regarding direct transactions that provides as follows: (1) Increase the maximum allowable total kilowatt-hours annual limit by 4,000 gigawatt hours and apportion that increase among the service territories of the electrical corporations. (2) All residential and nonresidential customer accounts that are on direct access as of January 1, 2019, remain authorized to participate in direct transactions.

Accordingly, on or before June 1, 2019, the Commission must authorize the increase in the allowable amount of GWh and apportion the increase to each service territory. Except for this express authorization for increased Direct Access transactions under SB 237, the previously enacted suspension of Direct Access transactions remains in effect. The allowable amount of GWh supplied by other providers[20] in each electric utility's distribution service territory will be increased to the maximum allowable annual limit for that utility's distribution service territory.

Also, the Commission will consider whether the June 1, 2019, implementation date will impact existing rules and regulations, including the

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[20] "Other Provider" is defined as "any person, corporation, or other entity that is authorized to provide electric service within the service territory of an electrical corporation pursuant to this chapter . . . . 'Other provider' does not include a community choice aggregator, as defined in Section 331.1 . . . ." *See* Public Utilities Code Section 635.1 (a).

Commission's rules governing Resource Adequacy. Thus, the Commission may, if appropriate, modify the open enrollment rules for assigning new load to the Direct Access program to account for Resource Adequacy considerations. These considerations appear in the "issues" section below.

Second, SB 237 adds Section 365.1 (e)(1), which states:

> On or before June 1, 2020, the Commission shall provide recommendations to the Legislature on implementing a further direct transactions reopening schedule, including, but not limited to, the phase-in period over which the further direct transactions shall occur for all remaining nonresidential customer accounts in each electrical corporation's service territory.

The requirement under this section is intended for the Commission to provide the legislature with guidance as it seeks to expand retail competition in the California energy markets. Accordingly, on or before June 1, 2020, the Commission will provide recommendations to the Legislature outlining an approach for reopening enrollment into the Direct Access program for all interested non-residential customers in each electric utility's distribution service territory, among other efforts.

3. DACC Petition and Responses

On September 4, 2018, Direct Access Customer Coalition (DACC) filed P.18-09-001, pursuant to Section 1708.5, seeking revisions to the Direct Access Customer Relocation Declaration form (Relocation Form), which is maintained in the tariffs of Southern California Edison Company (SCE), San Diego Gas & Electric Company (SDG&E), and Pacific Gas and Electric Company (PG&E) (together, Joint Utilities). The Relocation Form must be completed by customers who decide to transfer Direct Access service from its current location to a new location or to a different account.

Subsequently, on February 8, 2019, DACC and the Joint Utilities filed a joint motion to settle the outstanding issues in the Petition and requested that the Commission consider two proposals that the Joint Utilities raised, including revisions to the Direct Access Monthly Report discussed above.[21] The two proposals are scoped below.

4. Preliminary Scoping Memo

The Commission determines that the most efficient means of implementing Direct Access for the future is to review SB 237 and the remaining items from the Petition in this Order Instituting Rulemaking (OIR). The Commission will conduct this rulemaking in accordance with Article 6 of the Commission's Rules of Practice and Procedure, "Rulemaking."[22] As required by Rule 7.1(d), this OIR includes a preliminary scoping memo as set forth below, and preliminarily determines the category of this proceeding and the need for hearing.

5. Issues

The scope of this proceeding is to implement SB 237 and consider the two proposals from the Petition. The issues are described below.

I. How should the Commission implement Section 365.1(e) of SB 237?

1. Whether the Commission should adopt Staff's proposal, noted below, or a different approach. Staff's proposal:

   a. The 4,000 GWh is apportioned as a percentage of the load for the full service territory of an

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[21] *Supra* at 6.

[22] All references to "Rules" are to the Commission's Rules of Practice and Procedure unless otherwise indicated.

IOU, excluding residential and existing Direct Access load, irrespective of which load serving entity currently serves the remaining load.

b. To comply with year-ahead Resource Adequacy requirements, and address potential cost-shifting, customers enrolled as a result of the 4,000 GWh expansion will not begin service until January 2020.

c. Eligibility to enroll new Direct Access customers is based off the waitlist that went into effect on January 1, 2019.

2. Whether there are any timing or process issues related to the increase in Direct Access load and the Commission's rules and regulations for Resource Adequacy, the Integrated Resource Plan, and the Power Charge Indifference Adjustment.

3. Whether the Commission must take any additional action to comply with Section 365.1 (e)(2) of SB 237's mandate that "[a]ll residential or non-residential customer accounts that are on [D]irect [A]ccess as of January 1, 2019, remain authorized to participate in direct transactions."

4. Any other substantive issues necessary to implement Section 365.1.

II. With respect to the DACC Petition, the parties may comment on the following:

1. Whether the Direct Access Monthly Report, which IOUs provide to the Commission, should be revised to denote Direct Access load that is reserved and, therefore, not available to assigned to customers who are on the waitlist. Load will be considered as reserved if it is

assigned to a customer who has a pending load replacement, load relocation, or account transfer.[23]

2. Whether Direct Access customers should be permitted to relocate to a new location on the same premises.[24]

6. Categorization; *Ex Parte* Communications; Need for Hearing

Rule 7.1(d) of the Commission's Rules of Practice and Procedure requires that an order instituting rulemaking preliminarily determine the category of the proceeding and the need for hearing. As a preliminary matter, we determine that this proceeding is categorized as quasi legislative. *Ex parte* communications are therefore allowed without restriction or reporting requirements. (Rule 8.2(a).)

We are also required to preliminarily determine if hearings are necessary. We preliminarily determine that hearings are not necessary.

7. Preliminary Schedule

The preliminary schedule for initial activities in this proceeding is as follows:

SCHEDULE

EVENT	DATE
Comments on OIR filed and served	15 days from issuance of OIR
Reply comments filed and served	5 days from comment due date
Prehearing conference	April 4, 2019, 1:00 p.m., Commission Courtroom, 505 Van Ness Avenue, San Francisco, CA 94102.
Workshop	April 9, 2019, 10:30 a.m., Commission meeting

[23] *See* Petition at Attachment A.

[24] *Id.*

EVENT	DATE
	room, 505 Van Ness Avenue, San Francisco, CA 94102
Additional comments (if needed) filed and served	To be determined
Proposed Decision	April 30, 2019
Commission Decision	May 30, 2019 Agenda

The prehearing conference (PHC) will be held for the purposes of (1) taking appearances, (2) discussing schedule and process, and (3) informing the scoping memo. The PHC shall be held beginning at 1:00 p.m. on April 4, 2019 in the Commission Courtroom, 505 Van Ness Avenue, San Francisco, California 94102.

The assigned Commissioner or the assigned Administrative Law Judge(s) (ALJs) may change the schedule to promote efficient and fair administration of this proceeding.

For any workshops or other public meetings in this proceeding, notice of such workshops will be posted on the Commission's Daily Calendar to inform the public that a decision-maker or an advisor may be present at those meetings or workshops. Parties shall check the Daily Calendar regularly for such notices.

8. Respondents

Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, Liberty Utilities (CalPeco Electric), Bear Valley Electric Service, a division of Golden State Water Company, and Pacific Power, a division of PacifiCorp, are named as respondents to this proceeding.

9. Service of OIR

This OIR shall be served on all respondents.

In addition, this OIR will be served on the official service lists for P.18-09-001 and R.07-05-025.

Service of the OIR does not confer party status or place any person who has received such service on the Official Service List for this proceeding, other than respondents. Instructions for obtaining party status or being placed on the official service list are given below.

10. Filing and Service of Comments and Other Documents

Filing and service of comments and other documents in the proceeding are governed by the Commission's Rules of Practice and Procedure.

11. Addition to Official Service List

Addition to the official service list is governed by Rule 1.9(f) of the Commission's Rules of Practice and Procedure.

Respondents are parties to the proceeding (*see* Rule 1.4(d)) and will be immediately placed on the official service list.

Any person will be added to the "Information Only" category of the official service list upon request, for electronic service of all documents in the proceeding, and should do so promptly in order to ensure timely service of comments and other documents and correspondence in the proceeding. (*See* Rule 1.9(f).) The request must be sent to the Process Office by e-mail (process_office@cpuc.ca.gov) or letter (Process Office, California Public Utilities Commission, 505 Van Ness Avenue, San Francisco, California 94102). Please include the Docket Number of this rulemaking in the request.

Persons who file comments on this OIR become parties to the proceeding (*see* Rule 1.4(a)(2)) and will be added to the "Parties" category of the official service list upon such filing. *In order to assure service of comments and other documents and correspondence in advance of obtaining party status, persons should promptly request addition to the "Information Only" category as described above;* they will be removed from that category upon obtaining party status.

12. Subscription Service

Persons may monitor the proceeding by subscribing to receive electronic copies of documents in this proceeding that are published on the Commission's website. There is no need to be on the official service list in order to use the subscription service. Instructions for enrolling in the subscription service are available on the Commission's website at http://subscribecpuc.cpuc.ca.gov/.

13. Intervenor Compensation

Intervenor Compensation is permitted in this proceeding. Any party that expects to claim intervenor compensation for its participation in this Rulemaking must file a timely notice of intent to claim intervenor compensation. (*See* Rule 17.1(a)(2).) Intervenor compensation rules are governed by §§ 1801 *et seq*. of the Public Utilities Code. Parties new to participating in Commission proceedings may contact the Commission's Public Advisor.

14. Public Advisor

Any person or entity interested in participating in this rulemaking who is unfamiliar with the Commission's procedures should contact the Commission's Public Advisor in San Francisco at (415) 703-2074 or (866) 849-8390 or e-mail public.advisor@cpuc.ca.gov. The TTY number is (866) 836-7825.

Therefore, **IT IS ORDERED** that:

1. This Order Instituting Rulemaking is adopted pursuant to Senate Bill 237, Stats. 2018, Ch. 600 and Rule 6.1 of the Commission's Rules of Practice and Procedure.

2. The preliminary categorization is quasi-legislative.
3. The preliminary determination is that a hearing is not needed.
4. The preliminarily scope of issues is as stated above.
5. A prehearing conference is set for 1:00 p.m. on April 4, 2019 at a Commission Courtroom, located at 505 Van Ness Avenue, San Francisco, California 94102.
6. The preliminary schedule for the proceeding is set forth in Section 7 above.
7. Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, Liberty Utilities (CalPeco Electric), Bear Valley Electric Service, a division of Golden State Water Company, and Pacific Power, a division of PacifiCorp, are respondents to this Order Instituting Rulemaking.
8. Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, Liberty Utilities (CalPeco Electric), Bear Valley Electric Service, a division of Golden State Water Company, and Pacific Power, a division of PacifiCorp, shall, and any other person may, file and serve comments of not more than 20 pages responding to this Order Instituting Rulemaking (OIR) not later than 15 days from the issuance of this OIR, and reply comments no later than 5 days after the opening comments are due.
9. Comments on this Order Instituting Rulemaking should address the scope and schedule of this proceeding, and its interaction with other related proceedings, and the substantive issues included in the "issues" section above.
10. The Executive Director will cause this Order Instituting Rulemaking to be served on all respondents and on the service lists for the Commission proceedings on Petition 18-09-001 and Rulemaking 07-05-025.

11. Any party that expects to claim intervenor compensation for its participation in this Rulemaking must timely file its notice of intent to claim intervenor compensation. (*See* Rule 17.1(a)(2).)

This order is effective today.

Dated ______________________, 2019, at Coachella, California.